

REMARKS

1. Restriction Requirement

In the Office Action, the Examiner requires restriction between the following Groups:

Group I - Claims 87-177, drawn to a composition¹;

Group II - Claims 178-179, drawn to a method for obtaining a makeup for keratin fibers;

Group III - Claim 180, drawn to a process for obtaining a composition; and

Group IV - Claims 181-189, drawn to a cosmetic assembly.

See Office Action at 3-4.

The restriction requirement is respectfully traversed. However, to be fully responsive, Applicant provisionally elects, with traverse, Group I, drawn to a composition.

The instant application is a national stage filing under 35 U.S.C. § 371 and thus unity of invention practice applies to the application. The Examiner contends that “the inventions listed as Groups I-IV do not relate to a single general inventive concept ... because ... they lack the same or corresponding special technical features” *Id.* at 4. The Examiner states that “the structural moiety, element, or step common to Groups I-IV is a composition having at least one film-forming linear ethylenic block copolymer, which is known in the art (see US 6,805,873 teaching linear block ethylenic copolymers in cosmetic compositions from 1-99% by weight, with acceptable liquid solvents added)

¹ Although the Office Action says Group 1 contains claims 1-177, we assume this to be a typo as claims 1-86 were cancelled on February 21, 2007.

and therefore, cannot be said to be the special technical feature that makes a contribution over the prior art." *Id.*

Applicant respectfully disagrees with the Examiner's analysis of U.S. Patent No. 6,805,872 and the conclusion that the patent discloses the present invention. Applicant reserves any further response until the issuance of an official action directed towards the patent and the elected subject matter.

II. Election of Species

In addition, Applicant is further required to elect a single species for each genus:

- 1) **Different film-forming linear ethylenic block copolymers.** Applicant must elect a single species of film-forming linear ethylenic block copolymer. The election must specify every monomeric component of the block copolymer by name or chemical structure, with no generic or alternative groups. The election must also indicate the disposition of the monomers with respect to one another.
- 2) **Different additional film forming polymers.** Applicant must elect a single species of additional film forming polymer. The polymer must be elected with the same degree of specificity required for the film-forming linear ethylenic block copolymer above.
- 3) **Different container materials.** Applicant must elect a single claimed container material from those in claims 182 and 184.
- 4) **Different closing member types.** Applicant must elect a single closing member type, from those listed in the claims, such as screw, click-fastening, etc.

5) **Different applicator forms.** Applicant must elect a single disclosed applicator form, such as a twisted brush, etc.

See *id.* at 4-5.

Applicant elects, with traverse, the following:

1) for the film-forming linear ethylenic block copolymer - poly(isobornyl acrylate/isobutyl methacrylate/2-ethylhexyl acrylate) polymer with claims 87-98, 102-114, 138-189 reading on the elected species either literally or under the doctrine of equivalents;

2) for the additional film-forming polymer - vinyl acetate/allyl stearate with claims 87-168, 170-189 reading on the elected species either literally or under the doctrine of equivalents;

3) for the container materials - thermoplastic material with claims 181-182, 185-189 reading on the elected species either literally or under the doctrine of equivalents;

4) for the closing member types - screw with claims 181-185, 188, 189 reading on the elected species either literally or under the doctrine of equivalents;

5) for the applicator forms - twisted brush with claims 181-188 reading on the elected species either literally or under the doctrine of equivalents.

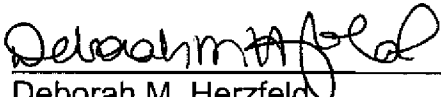
Applicants submit that the Examiner's election requirement is improper and should be withdrawn. Furthermore, if the Examiner chooses to maintain the election of species requirements, Applicant respectfully reminds the Examiner of the duty of rejoinder, and of the duty to expand the search to non-elected species after the elected species has been found to be allowable. See M.P.E.P. § 803.02 and 35 U.S.C. § 121.

III. Conclusion

In view of the foregoing remarks, Applicant respectfully requests reconsideration and examination of the claims. Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: 
Deborah M. Herzfeld
Reg. No. 52,211

Dated: April 17, 2009